

Analysis of responses received to Statutory Consultation on the proposals on the alignment of health and safety regulations with the EU direct acting Classification, Labelling and Packaging regulation.

Introduction

This is a summary report of the outcome of HSE's formal statutory consultation to the proposals on the alignment of health and safety regulations with the EU direct acting Classification, Labelling and Packaging regulation. It is designed to be read in conjunction with the consultation document CD269 (CD).

The consultation exercise was published on HSE's website and through a number of HSE's e-bulletins. In addition, emails were sent directly to identified stakeholders. The consultation formally closed on 5 August 2014 and responses were received via a range of media.

This report is based on the 32 responses to the CD. As some respondents may have offered a number of opinions in relation to some, but not all, of the questions, total percentages under any one question are expressed as a measure of those answering each question, not as a measure of all respondents.

The breakdown of respondents is as follows:

Type of organisation	Number	Percentage
Consultancy	5	16%
Industry	11	34%
Local government	2	6%
Member of the public	1	3%
National government	2	6%
Non-governmental organisation	1	3%
Trade association	4	13%
Trade union	1	3%
Blank/other	5	16%
Total	32	100%

Responses received by capacity:

Capacity	Number	Percentage
An employer	4	13%
An employee	4	13%
Health and safety professional	15	47%
Trades union official	1	3%
Training provider	1	3%
Blank/other	7	21%
TOTAL	32	100%

Background

In January 2009 the European Union direct acting Classification, Labelling and Packaging of Substances and Mixtures Regulation (EC) No 1272/2008 (CLP Regulation) was introduced in all EU member states. The CLP Regulation progressively replaces the Dangerous Substances Directive (DSD) and the Dangerous Preparations Directive (DPD), which deal with the classification, hazard communication and packaging of chemicals, and will come fully into force on 1 June 2015 (subject to some minor transitional arrangements continuing until 2017).

The CLP Regulation adopts across Europe the United Nations Globally Harmonised System (GHS) on the classification and labelling of chemicals. This means the existing European classification system and hazard warning symbols will be replaced by GHS and a new set of hazard pictograms.

The changes proposed to the affected regulations are the minimum legally required to implement the amending directive. This approach has been taken with the aim of ensuring any additional costs of implementation to business are kept to the minimum possible.

Overview

There were 32 respondents to the consultation, the majority of which demonstrated in their answers that they were well informed regarding CLP and the health and safety regulations being amended. There was high agreement that the proposed amendments were sufficient to implement the amending directive, the majority of results being in excess of 90% positive.

No major issues were raised with regard to the proposals, although a number of helpful comments were made regarding clarification of signage changes which will be taken forward in guidance.

The consultation successfully tested and confirmed a number of assumptions and estimates made in the impact assessment. A number of revisions to the impact assessment were made on the basis of information received during the

consultation including an increase in the familiarisation costs associated with signage changes and wage estimates, and the inclusion of sign replacement due to wear and tear.

Summary of responses

The document was divided into four sections, A to D, which explained the amendments required to each of the four sets of regulations affected. Each section contained questions relating specifically to the amendments required to comply with the amending directive and the implementation of the H&S directives being amended. In addition, the questions asked were designed to test the assumptions and estimated costs made in the impact assessment.

It was not necessary for respondents to complete the questions for every section, only those sections that were relevant to them. The following table shows the breakdown of sections that were answered. There were 75% of respondents who chose to answer all of the sections.

Option	Results	Count
A) Health and Safety (Safety Signs and Signals) Regulations 1996	13%	4
B) Control of Substances Hazardous to Health Regulations 2002	6%	2
C) Dangerous Substances and Explosive Atmospheres Regulations (DSEAR) 2002	3%	1
D) Management of Health and Safety at Work Regulations 1999	0%	0
B) C) and D)	3%	1
All of the above regulations	75%	24
TOTAL	100%	32

A) Health and Safety (Safety Signs and Signals) Regulations 1996

Q1. Do you think that the amendments proposed to the Health and Safety (Safety, Signs and Signals) Regulations 1996 are sufficient to implement the amending directive?

Number of Responses	Yes	No
27	23 (85%)	4 (15%)

The majority of respondents, 85%, agreed that the proposed amendment implemented the amending directive. Those who disagreed did not raise concerns directly relevant to the question as the comments did not relate to the implementation of the amending directive.

One respondent who answered yes and demonstrated a high level of familiarisation with CLP and SSSR, requested that guidance on where warning signs and pictogram signs should be used be made available. The comments made by those who disagreed related to similar themes and were helpful in identifying issues that would need to be taken forward as guidance, including:

- Clarification of where to use warning signs and pictograms, including moderate health hazard and other human health pictograms
- Clarification that supplementary text can still be used on signs

Impact on business

The following questions relate to the Impact Assessment at annex 3. Please note, where the word sign is used it should be read to mean sign or label.

Q2. HSE has excluded micro units (1-9 employees) from the estimate of costs as they are assumed to have less complex premises and processes and therefore are more likely to rely on the labelling provided on packaging and containers by suppliers to provide necessary warning information.

If they do use signage it was considered likely that this would be a *General* danger warning sign on a storeroom containing a number of chemicals, which is not affected by these changes. Do you think this assumption is realistic?

Number of Responses	Yes	No
27	21 (78%)	6 (22%)

The assessment assumes no costs to micro businesses warning information. Even where micro businesses, are required to update workplace hazardous substance signage, we expect the number of signs to be replaced and corresponding costs to be very low. These assumptions were tested at consultation and 78% agreed that they were reasonable.

Those that disagreed raised the issue of micro businesses needing to familiarise themselves with the signage not that they would need to take any additional practical action. Given micro businesses will be low users of signs, HSE believes it is reasonable to assume it is unlikely they will familiarise themselves with the changes. When they need to replace a sign they are likely to be advised by their supplier about the changes. On this basis, HSE's view is that it is not proportionate to include familiarisation costs for micro businesses in the analysis.

Q3. HSE has assumed that hazardous chemicals signage is commonly used in the following broad industry groups (see Impact Assessment Appendix A para A4):

- All classifications related to mining, manufacturing, agriculture, and aquaculture;
- Energy generation, water treatment, sewerage and remediation activities;
- Wholesale, distribution and transport activities (where hazardous chemicals may be transported and stored);
- Scientific, research, testing and engineering activities;
- Defence, education and human health.

Do you think this is reasonable?

Number of Responses	Yes	No
26	22 (85%)	4 (15%)

If not, please explain which other industry groups should be included or excluded

Whilst 85% of respondents agreed with this, those that disagreed provided useful information e.g. a photograph was provided showing flammable signs on a storage container on a construction site. Large construction sites have

now been included in the impact assessment. Some elements of the retail sector were also suggested and have now been included.

Q4. Are you aware of any common scenarios in which the *harmful or irritant* yellow and black warning sign (black X, see Table 1) is currently used?

Number of Responses	Yes	No
26	15 (58%)	11 (42%)

If so, please describe.

Whilst 58% of respondents said that they were aware of where the yellow and black warning signs are currently used some of the answers were not directly relevant to the question. In addition, a third of those who responded 'yes' did not make any further comments.

This question was intended to test the assumptions made in the impact assessment about percentage of signs that need to change, the scenarios described were limited in scope and did not demonstrate the need to revise the assumptions around signage replacement.

Q5. To the best of your knowledge are signs other than the *general danger* yellow and black warning sign (exclamation mark, see Table 1) commonly used on stores of hazardous chemicals?

Number of Responses	Yes	No
26	22 (85%)	4 (15%)

If so, which other signs are used and in which circumstances?

The vast majority, 85% of the respondents, said that they were aware of other signs being used. The majority of respondents who gave examples referred to flammable signs which are available as yellow triangle warning signs and CHIP pictograms so it was not clear what proportion of these would be subject to change. Only two respondents gave examples of CHIP pictogram signs being used and these corresponded with sectors identified as being high sign users in the impact assessment. CLP signs are already being supplied and one respondent described that *CLP Red Diamond Pictograms are now commonplace*.

Taken together with the answers to Q5 and Q9, the evidence broadly confirms HSE's assumptions around the percentages of signs that need to change, although the estimates of total number of hazardous signs in business units

has been increased to reflect the use of flammable signs which was more common than originally estimated.

Q6. What do you think the main impacts of the restriction on the use of the *General danger* yellow and black warning sign in relation to hazardous chemicals will be?

There were a wide range of answers given here, 22 in total. The majority said that there would be no impact whilst several others said that it would lead to confusion and a need for increased training. Two respondents said that the number of signs will increase.

There were also positive comments made. One respondent said that there would be no impact as a smooth transition to GHS (CLP) labels is already happening. Another said that there will be a positive impact as it will give the user more information as to the substance that they are working with and the actual hazard it poses rather than a general symbol which may lower their perceived risk of exposure and harm. This point was reiterated by another respondent who said that the 'General' danger sign is not specific enough to indicate the nature of the material stored.

The impacts of the restriction of the General Danger warning sign that were cited broadly reflect the impacts of signage change identified in the impact assessment. Training is discussed in the response to Q11 regarding familiarisation costs.

Q7. Is HSE's estimate of the average cost of a single hazardous chemicals sign to be typically between £3 and £7 reasonable?

Number of Responses	Yes	No
25	20 (80%)	5 (20%)

If not, what would be a reasonable estimate?

The majority, 80% of respondents, agreed with HSE's estimate and this remains unchanged.

Q8. To the best of your knowledge how frequently do signs need to be replaced due to wear and tear?

There were a number of broadly consistent answers to this question from which an estimate of replacement of every five years can reasonably be made.

Q9. Approximately how many hazardous chemicals signs do you think you will need to change due to these amendments?

The answers to this varied and in retrospect the question could have been phrased better to relate to chemical signs that need to change per business unit or site. This question was not applicable to some of the respondents and others stated that they would not need to change any signs. Respondents commented on the difficulty of estimating how many signs would need to be changed and for those that did provide estimates the answers varied widely.

Several comments acknowledged that the number of signs to be changed will depend upon the size of the site and the types of products used or stored there. Even with sites of a similar size and nature, different and equally valid signage may have been chosen as health and safety regulations are focused on assessing risk and communicating it effectively, not prescribing signage.

The increase in the number of hazardous substance signs used, on sites made as a result of the comments demonstrating the widespread use of the flammable sign given in response to Q5, has increased the estimate of number of signs that will need to be changed at sites to broadly reflect the answers given to this question.

Q10. HSE has estimated the labour cost of replacing a sign as £2.40 per sign based on it taking 15 minutes with a wage of £9.50/hr, is this reasonable?

Number of Responses	Yes	No
26	18 (69%)	8 (31%)

If not, what would be a reasonable estimate?

There were eight respondents, 31% who disagreed with this assumption with some of these estimating that both the duration of time and wage rate will be higher. The revised impact assessment uses a higher wage rate.

Q11. HSE has assumed that the most significant costs associated with the proposed changes to signage is the cost of familiarisation with the changes. Is the estimated familiarisation cost per business of £15 (based on it taking 30 minutes to an hour to become sufficiently familiar to make decisions on whether new signs may be required, with a wage of £20/hr) reasonable?

Number of Responses	Yes	No
26	11 (42%)	15 (58%)

If not, what would be a reasonable estimate?

Some respondents to the consultation commented on the need to include additional familiarisation costs for employees more generally. The wider costs of the introduction of the CLP Regulation have already been accounted for in the impact assessment carried out in 2007 (see paragraph 8 of the impact assessment). Comments made by other stakeholders confirm that the long lead in time for CLP means there is a growing awareness of CLP and the CLP pictograms. The current proposals are limited to a small number of specific changes to workplace signage. Of the 58% of those who disagreed, the cost of labour/wage was cited by 3 (20%), time was cited by 8 (53%), and 2 (13%) referred just to training and no other familiarisation costs. One respondent stated that familiarisation costs would be negligible compared to signage costs. The wage and familiarisation costs have been increased in line with the comments made. Having considered the points made regarding training, HSE's view is that the changes can be effectively communicated as part of routine team meetings/briefings and other existing workplace communication channels.

Q12. Do you have any other comments on the Impact Assessment, including other assumptions made, that are not covered by questions 2 – 11?

Some comments were made but these were covered by questions 2 – 11 and these have been taken into account in the analysis of the responses.

B) Control of Substances Hazardous to Health Regulations 2002

Q13. Do you agree or disagree that the changes described in the consultation document for the COSHH Regulations will not change the scope of the regulations or impose any new requirements?

Number of Responses	Yes	No
26	25 (96%)	1 (4%)

There were 96% of respondents who agreed with this. Favourable feedback was received by one respondent representing a large industry association who said that based on the feedback received from their members to date, they did not believe that the changes described in the consultation document would change the scope of the regulations or impose new requirements.

If you disagree, please explain

One respondent commented that risk assessments would need to be amended to correct the new terminology in CLP, there is no requirement to amend risk assessments solely to update terminology, if this were necessary it could be done when the risk assessment is up for review as part of the normal review process.

Q14. Do you have any more general comments to make about how the COSHH Regulations implement the Carcinogens and Mutagens Directive and the Chemical Agents Directive, in relation to your business? If so please explain.

The majority of respondents did not have any further general comments to make. One respondent stated their support for COSHH as a proven and effective legislative vehicle for implementation of the directives, while another confirmed the changes were minor and technical and would have no impact on their large site. A considered comment was made regarding the COSHH definition of a hazardous substance which gave a reference point of Table 3.2 of CLP. It was suggested as there would no longer be a reference point HSE should promote the use of the CLP inventory on the ECHA website. Whilst this is a valid point, we would expect that duty holders would obtain the information they require from the safety data sheets and/or other reliable sources, and we don't think that it is necessary to promote the ECHA CLP inventory. We believe that for most users this would be rather confusing, however we will monitor developments on this matter.

C) Dangerous Substances and Explosive Atmospheres Regulations (DSEAR) 2002

Q15. Do you think that the amendments to DSEAR are sufficient to implement the amending directive?

Number of Responses	Yes	No
24	23 (96%)	1 (4%)

The proposed amendments to DSEAR were highly supported with 96% of respondents in agreement.

If not, please explain

There was no comment from the respondent who disagreed.

Q16. Do you agree or disagree with the statement in paragraph 40 that assuming businesses are already complying with their general duties, they will not need to take any additional action?

Number of Responses	Yes	No	Yes/No
23	14 (61%)	8 (35%)	1 (4%)

This assumption has been confirmed with a majority of 61% of respondents agreeing with this.

If you disagree, please explain why

Of those that did not agree the main issue raised was the need to check that existing risk assessments were sufficient to address the changes. No respondents indicated they anticipated needing to take any additional practical action beyond this to revise procedures etc. It is a legal requirement to regularly review risk assessments both under DSEAR and under the more general requirements of the Management of Health and Safety Regulations so, assuming duty holders are complying with this requirement there will be no significant additional costs involved in reviewing risk assessments to take account of these changes.

Q17. Do you have any more general comments to make about how DSEAR implements the Chemical Agents Directive, in relation to your business? If so please explain

Several comments were made. One response indicated that it would be useful to remove the overlap between DSEAR Regulation 10 and the Health and Safety Signs Regulations in order to reduce confusion. However, there is no overlap in the Regulations. The purpose of Regulation 10 applies to dangerous substances that are not subject to the requirements of other legislation such as The Health and Safety (Safety Signs and Signals) Regulations 1996.

D) Management of Health and Safety at Work Regulations 1999

Q18. Do you agree or disagree that the changes to the MHSW Regulations described in the consultation will not impose any new requirements?

Number of Responses	Yes	No
24	22 (92%)	2 (8%)

The proposed amendments to MHSW were highly supported with 92% of respondents in agreement.

If you disagree, please explain

One of the respondents who disagreed referred to the introduction of the new CLP Hazard class of flammable aerosols (Category 1) in Regulation 3(5)g which describes elements to be included in the risk assessment for young people and expanded in the response to Q19 described below.

Q19. Do you have any more general comments to make about how the MHSW Regulations implement the Pregnant Worker Directive and Young People at Work Directive, in relation to your business? If so please explain

One respondent with a high level of familiarity with CLP commented that implementing the change to the list of chemical agents in the Young People at Work Directive (94/33/EC) and the proposed subsequent implementation into Regulation 3(5)g of the MHSW Regulations may result in confusion for organisations who employ young workers, as the inclusion of Category 1 aerosols brings into scope a large number of household aerosols. As the risk from these substances to young people has not changed with the change in classifications in the Annex of 94/33/EC, companies are not expected to take any different action concerning the provisions they put in place for young people. HSE does not expect that this change will result in confusion as these substances are widely familiar and the low risk associated with them is common knowledge.

Other

Is there anything you particularly like or dislike about this consultation?

Please provide comments.

The majority of respondents had no further comments.

There were several comments from respondents stating that it had been useful for them to have had the opportunity to comment.

In the main, comments were provided regarding the amending directive rather than the proposals in the consultation itself.

There was a criticism that the consultation did not begin early enough so that the changes to SIs will have been made and published in time to provide for a realistic transitional period. There was also one criticism that HSE had assumed that the long lead in time for implementation of CLP has already led to a high level of familiarisation which according to the respondent is not the case. The timing of the implementation is set by the amending directive.